(1)

Supreme Court, U.S.
FILED

No. 03 223 AUG 4 2003

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IN THE
SUPREME COURT OF THE UNITED STATES

GERALD F. KARLHEIM
Petitioner

versus

THE COURT OF COMMON PLEAS FOR CAMBRIA
COUNTY
PENNSYLVANIA

PETITION FOR WRIT OF PROHIBITION

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39 pp

QUESTIONS PRESENTED

1. Whether Respondent can compel Petitioner to accept a privilege and membership in a private federated unincorporated association under 15 U.S.C. §1602 (c), (d), (e); H.J.R. 192, (48 Stat 113), thus be compelled to perform to territorial law under Article IV Section 3 cl. 2, in violation of Article I Section 10, Article IV Section 3 cl. 1, Amendments 9, 10, and 14 to the Constitution of United States.

2. Whether the lower court made a political decision in violation of the separation of powers doctrine under Article II.

LIST OF THE PARTIES

All parties appear in the caption of the case in the cover page.

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

Pennsylvania Supreme Court Order, filed May 15th, 2003, appears in Appendix at A-1, infra.

Pennsylvania Superior Court's Order, filed August 29th, 2002, appears in Appendix at A-2, A-3 infra.

Court of Common Pleas of Cambria County Order, filed, June 14, 2002, appears in Appendix at A-4, A-5 infra.

Pennsylvania Superior Court Order filed August 13, 2002 appears in Appendix at A-6, A-7 infra.

JURISDICTION

This Court's jurisdiction is invoked under Title 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I Section 10 provides in relevant part:

Revelant part of Article I Section 10 clause 1 to the Constitution of U.S. to wit:

> "No State shall make anything but . . .
> Payment of Debts . . . or Law
> impairing the Obligation of Contracts, . . . ".

Article II

Separation of Powers

Article IV Section 3 cl. 1

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the

Legislatures of the States concerned as well as of the Congress.

Article IV Section 3 cl. 2

The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Article VI cl. 2

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment IX

The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIV

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. . . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

15 U.S.C. Chap. 41, §1602 (c), (d), (e).

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

J 192 73 RD CONG., 1ST SESSION (48 STAT 113) JUNE 5, 1933 TO WIT:

Joint resolution to assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation,

heretofore or hereafter incurred, whether or not such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable on money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agriculture purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agriculture indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes." approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion of their actual weight."

Approved, June 5, 1933, 4.40 p.m.

STATEMENT OF THE CASE

Petitioner is the defendant named and served in a certain action entitled "Sturdy Built Mfg Inc, Plaintiff, vs. Gerald F. Karlheim, in the Court of Common Pleas, Cambria County, Commonwealth of Pennsylvania

On or about April 1, 2002, Karlheim was summoned as Defendant to appear to answer a complaint by which Sturdy Built in that action demanded $27,000.00 in damages for breach of contract.

In the beginning, Sturdy Built Mfg. Inc. had contracted with the Kaleitas, a private
party to construct two apartment buildings. A conflict arose on the quality of the workmanship performed by the sub-contractor of Sturdy Built and construction money draws. Karlheim was also a sub-contractor of Sturdy Built, whom did not work on the entire Kaleita project, but was there in the later stage of construction for certain tasks.

As a result of the dispute between Sturdy Built and the Kaleitas, the Kaleitas terminated the contract with Sturdy Built, then asked Karlheim if he would finish the project. Karlheim agreed and did finish the project, thus the alleged breach of contract between Sturdy Built and Karlheim.

In obedience to said complaint, Karlheim appeared before said court within the time limits of the complaint and entered an objection to the jurisdiction of the court by challenging the court's subject-matter jurisdiction to compel defendant to perform to an unincorporated association under 15 U.S.C. 1602 outside the protection of Article I Section 10 to the U.S. Constitution.

The pertinent part of Section 14.3 of Sturdy Builts contract reads: "All rights, powers, privileges, and remedies conferred herein upon the parties shall be cumulative and are in addition to any rights, powers, privileges, and remedies available to the parties by statute or otherwise at law or in equity."

Notwithstanding Karlheim's objection to the jurisdiction of said court to hear and determine the pending action against

Karhheim, the court, Respondent herein, proceeded to overrule and deny the objection, to wit:

> AND NOW, this, following consideration of the briefs, oral argument, the pleading, and the entire record, the Court finds that the Defendant's Preliminary Objections are hereby DENIED and DISMISSED. Signed by the Honorable Judge Long on the 14th day of June 2002.

On or about the 8th day of July, 2002, Karlheim appealed the court's decision to the Superior Court. Said appeal being denied the court stating:

> "AND NOW, THIS 13th Day of August, 2002, this court hereby SUA SPONTE QUASHES the above-captioned appeal, as the trial court's order on appeal is interlocutory. See Shadduck v. Kaclik, Inc. 713 A2d 635 (PA Super. 1998) (stating that order denying preliminary objections is not a final appealable order). Per Curiam"

On or about July 17, 2002, petitioner filed a petition for writ of prohibition based upon subject-matter with the Superior Court. Said court's Order reads:

> "Petitioner Karlheim's August 29, 2002 petition for writ of prohibition is DENIED". Date: September 9, 2002.

On September 23, 2002, Petitioner filed for a writ of prohibition with the Pennsylvania State Supreme Court. Said writ being Denied on May 15, 2003.

> AND NOW, this 15th day of May, 2003, the request for leave to file original process is granted. The Petition for Writ of Prohibition is denied and the judge's name is to be stricken from the caption.

REASONS FOR GRANTING WRIT

The court of common pleas, superior court, and the state supreme court did not rule on the issues presented, stating only that the petition for writ of prohibition is denied.

The ideals of . . . the Bill of Rights provide the mucilage which holds majorities and minorities ... of our Nation, and make tolerable the existence of nonconformists who do not walk to the measure of the beat of the Chief Drummer. MR. JUSTICE DOUGLAS, dissenting. *Palmore v. U.S.* 411 389, 419.

A state court cannot deprive a litigant of a federal right by omitting to pass upon basic questions of fact. In that situation the Supreme Court will examine the record itself to determine "what facts reasonable might be and presumably would be found therefrom by the state court." *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 703 (1945); *Merchants Nat. Bank v. Richmond*, 256 U.S. 635, 638 (1921); *Carlson v. Washington*, 234 U.S. 103, 105 (1914).

That the decision below calls for an exercise of the Supreme Court's supervisory powers under Rule 10.

The instant case is a dispute over Karlheim's (hereinafter Petitioner's) right of contract not to be a member of an unincorporated banking association and unincorporated state under H.J.R. 192 (48 Stat 113); 15 U.S.C. §1602 (c), (d), (e); the 14th Amendment and Article IV Section 3 cl. 2; as opposed to Petitioners incorporated state under Article IV Section 3 cl. 1, that the courts have not considered but have a constitutional obligation to police.

In order for the court to render a valid judgment the court must have jurisdiction of the subject matter. *Wall v. Wall* (1889) 123 Pa 545, 16 A 598.

Petitioner cannot be compelled, via of H.J.R. 192 (48 State 113) supra, to mortgage his future performances to "discharge" an obligation to Respondent and to an unincorporated banking association when in fact and in law, Petitioner does not avail himself of the privileges and immunities of being a debtor/creditor in private Roman law (ius gentium.) under the 14th Amendment. That the lower court's orders consist of a political decision essentially

saying he can "Pay" a debt despite the fact that Congress stated by H.J.R. 192 (48 State 113) supra, that it is against public policy to demand "Payment" of debt. That said Orders flies in the face of Article I Section 10 both on the subject of "Payment" and Obligation of Contract.

That a "discharge" via H.J.R. 192 (48 State 113) supra, is contrary to Article I Section 10 cl. 1 to the U.S. Constitution on the subject of "Payment" to wit:

> "No State shall . . . make any Thing but . . . a Tender in Payment of Debts;"
>
> There is a distinction between a "debt discharged" and a "debt paid." When discharged the debt still exists though divested of its character as a legal obligation during the operation of the discharge. Something of the original vitality of the debt continues to exist which may be transferred, even though the transferee takes it subject to its disability incident to the discharge. The fact that it carries something which may be a consideration for a new promise to pay, so as to make an otherwise worthless promise a legal obligation, makes it the subject of transfer by assignment. *Stanek v. White*, 172 Minn. 390, 215 N.W. 784.

Petitioner further argues that H.J.R. 192 (48 State 113) supra, is only prima facie evidence of being "subject to the jurisdiction thereof" in the 14th Amendment. That there is a conflict of law between public policy and Petitioner's private policy. That "and subject to the jurisdiction thereof" is based upon the presumption that there is a debt res in the form of a privilege of deferring "payment" of debt operating quasi in rem. And further, that as a member of an unincorporated banking association under Title 15 U.S.C. Sec. 1602 (c), (d), (e), those members, as debtors/creditors, receive special grants from the public trust such as the privilege of printing

their own money for the sake of convenience and utility in a debtor/creditor relationship under private Roman law. Whereas, petitioner is a creditor and merchant at law on the cash basis.

Further, regarding H.J.R. 192, (48 Stat 113) supra, the result may arise from the nature of the subject matter of the statute itself, as where a statute is perfectly valid in its general and proper application and yet void in particular applications of its provisions. The whole legislation, in all its parts, as to creditors affected by it and not consenting to it, must be pronounced null and void as when Petitioners rights to Pay at law have been unlawfully refused under article I Section 10 to stand on his contract rights in defense of his person and property against all unlawful assults and seizures. *Poindexter v. Greenhow*, 114 US 270. A statute valid at one time may become void at another because of altered circumstances. *Nashville, C. & S. L. Railway v. Walters*, 294 US 405. Thus, if a statute in its practical operation becomes arbitrary or confiscatory its validity, even though affirmed by former adjudication is open to inquiry and investigation in the light of changed conditions. *Re Opinion of Justices*, 278 , 181 NE 833. This principle is applicable to acts of Congress. *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 US 146.

The 14th Amendment reads in part:

> Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. . . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."
>
> The 14th amendment is an executive order (proclamation) Vol. 1 of Presidential Executive

Orders, 2 vols. (N.Y.: Books, Inc. 1944—Copyright by Mayor of N.Y. 1944).

"[T]he term 'subject to the jurisdiction thereof' . . . must be construed in the sense in which the term is used in international law as accepted in the United States as well as Europe. * * * The provision of the 14th Amendment alluded to. . . is affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen with respect to citizenship." Francis Wharton, *A Treatise on the Conflict of Laws or Private International Law*, 3rd ed. (Lawyers Co-operative Publishing Co., 1906), vol. 1, pp. 45-47.

"International law, in its widest and most comprehensive sense,- including not only questions of right between nations, governed by what has been appropriately called the 'law of nations,' but also questions arising under what is usually called **'private international law,' or the 'conflict of laws,' and concerning the rights of persons within the territory and dominion of one nation**, by reason of acts, private or public, done within the dominions of another nation,-is part of our law, and must be ascertained and administered by the courts of justice as often as such questions are presented in litigation between man and man, duly submitted to their determination.

The most certain guide, no doubt, for the decision of such questions is . . . a statute of this country. But when, as is the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is, whenever it becomes necessary to do so, in order to determine the rights of parties to suits regularly

> brought before them. In doing this, the courts must obtain such aid as they can from judicial decisions, from the works of jurists and commentators, and from the acts and usages of civilized nations." *Hylton v. Guyot* 159 U.S. 113, 163, quoting *Fremont v. U. S.*, 17 How. 542, 557; *The Scotia,* 14 Wall. 170, 188; *Respublica v. De Longchamps*, 1 Dall. 111, 116; *Moultrie v. Hunt,* 23 N. [Bold emphasis added]

Petitioner argues that in a debtor/creditor relationship under the 14th Amendment as a "person", one becomes primarily a U.S. citizen and resident. The term "resident" is often used in the sense of "domicil" as in case of insolvency statutes, HJR 192, (48 Stat 113) supra, . . . , voting, and questions of jurisdiction. *People v. Platt*, 50 Hun (N. Y.) 454; *De Meli v. De Meli* 120 N.Y. 485; *Ayer v. Weeks*, 18 Atl. 1108. *Leading Cases on Private International Law* by Dicey Conflict of Laws, p. 57.

In his treatise on the *History of Land Titles in Massachusetts*, (1801), James Sullivan, former Chief Justice of the Massachusetts Supreme Judicial Court at pp. 337-338 stated:

> Personal estate is not fixed to any place or country, and contracts depend on the jus gentium (the general law of nations) for their origin and their expositions, rather than on any municipal regulations of particular countries.
>
> It is observed by Justinian, that the law of nations is held in common by all the world; and that all contracts had their origin in those necessities of mankind, which urged them to buying, selling, etc. ... As personal contracts are founded in commerce, they cannot rest on the particular laws of one country only; but ought to be the subject of those principles of the general law of nations, which are acknowledged by the world.

On the subject of domicile concerning English law, Sir S. Romilly in *Potinger v. Wrightman* 3 Mer 67 (1817), said in argument:

> "Of authority on this subject, in the English law, none exist . . ; but it has been much discussed by foreign jurists, to whose opinions (in the absence of domestic authorities) our courts are accustomed to resort, on questions which (like the present), must be decided rather by general principles of law, than by the peculiar doctrines of any local code."

He went on to quote from J. Voet, Rodenburg, Bynkershok, Denisart, Grivello, and Pothier. In delivering his opinion the Master of the Rolls (Sir William Grant) said:

> "On the subject of domicile there is so little to be found in our own law that we are obliged to resort to the writings of foreign jurists for the decision of most of the questions that arise concerning it. ... The weight of authority is certainly in favour of the former proposition. It has the sanction both of Voet and Bynkershoek. ..."

Bruce v. Bruce 6 Bro.P.C. 566 (1790) is a case which is the foundation of the present law on the subject of succession concerning the introduction of private international law into England wherein the court stated that "all debts follow the person, not of the debtor in respect of the right of property, but of the creditor to whom due."

Joseph Story in his Commentaries on domicile in 1834, cites *Bruce v. Bruce* supra, as an English case, but it is worth emphasing that it was a Scottish appeal and was argued as such. *Balfour v. Scott* 6 Bro.P.C. 550; November 15, 1787, Faculty Collection, and *Hog v. Lashley* 6 Bro.P.C. 577, were also Scottish appeals, the forerunners of many Scottish conflict cases which became "naturalized" in England.

Hunter v. Potts 4 T.R. 182 was an English case, but there was ample citation of Scottish case law and authorities

including Kames and Erskine, as well as of the works of Continental jurists.

See also *Brown v. Brown* M. 4604 (1744) where the court agreed "*the domicile of the creditor was to be the rule*" [Italics in original].

TERRITORIAL LAW AND ASSOCIATIONS

The Court ruling on the property clause of Article IV Section 3 cl. 2 to the U.S. Constitution stated:

> Literally, the word "territory", as there used, signifies property, since the language is not "territory *or* property", but "territory or *other* property." There thus arises an evident difference between the words "*the* territory" and "*a* territory" of the United States. The former merely designates a particular part or parts of the earth's surface-the imperially extensive real estate holdings of the Nation; the latter is a governmental subdivision which happened to be called a "territory", but which quite as well could have been called a "colony" ... "province" .... 'A territory, under the Constitution and laws of United States is an inchoate state," quoting *Ex parte Morgan* D.C. 20 Fed 298, 305. *O'Donoghue v. United States*, 289 US 516, 537 (1933). [Italics in original]

> The. An article which particularizes the subject spoken of. "Grammatical niceties should not be resorted to without necessity; but it would be extending liberality to an unwarrantable length to confound the articles 'a' and 'the'. The most unlettered persons understand that 'a' is indefinite, but 'the' refers to a certain object." Black's Law Dict. 5th Ed.

In other words, "a territory" is not incorporated by reference into the Union of states under Article IV Section 3 cl. 1.

The constitutional guarantees of private rights are applicable in territories which have been made a part of the United States by congressional action *Downes v. Bidwell*, 182 US 244, 271 (1901) **but not in unincorporated territories**. *Downes v. Bidwell* 182 US 244 [Bold emphasis added].

> ". . . for the sake of distinction from the other branch or portion of English law, be called the 'territorial' or 'local' law of England. This territorial law constitutes indeed so much the oldest and most important part of English law that it has been constantly taken to be, and treated as, the whole of the law of the land. - Blackstone's Commentaries, for example, though written with the avowed object of describing the whole of the 'law of England' contain no mention of any rules which do not belong to the territorial or local law. . . . . For the term 'law of a given country' has, at least, two meanings. It may mean, and this is its most proper sense, every rule enforced by the Courts of that country. It may mean, from LEADING CASES IN PRIVATE INTERNATIONAL LAW on the other hand, and this is a very usual sense, that part of the rules enforced by the Courts of a given country which makes up the 'local' or 'territorial' law of a country." Quoting, by John W. Dwyer, Chapter I, NATURE OF THE SUBJECT, pp. 4, 5, Callaghan Co. (1904).

A local law is one which operates over a particular locality instead of over the whole territory of the state. *Ulrich v. Beatty*, 216 N.E.2d 737, 746. One which relates to particular persons or things or to particular persons or things of a class or which operates on or over a portion of a class instead of all of the class. *In re Annexation of Reno Quartermaster Depot Military Reservation to, Independent School Dist. No.34. Canadian County, Okl.*, 69 P.2d 659, 662. One whose operation is confined within territorial limits, other than those of the whole state or any properly

constituted class or locality therein. *State v. Kallas*, 94 P.2d 414, 420; *Ravitz v. Steurele*, 257 S.W.2d 360, 364.

Association is "confederacy or union for particular purpose, good or ill. This term is used throughout the United States to signify a body of persons united without a charter, but upon the methods and forms used by incorporated bodies, for the prosecution of some common enterprise." *Allen v. Steven's*, 54 N.Y.S. 8, 23, 33 App.Div. 485.

From the book, *THE LAW RELATING TO UNINCORPORATED ASSOCIATIONS* by Dennis Lloyd, Street & Maxwell, London, (1938) it is read:

> "It is an axiomatic proposition in the law of contract that the agreement of the parties cannot affect the legal position of other persons who were not parties to the contract. As regards them the contract is res inter alios acta and of no effect. This rule has important consequences as regards voluntarily associations, or it means that no agreement between the members of such an association can effect the rights of others not parties to the agreement. The members of an unincorporated society, for example, agree that their personal liability for the transactions of the society shall be limited to a certain sum. Though this will be binding on the members inter se, it can have no effect whatever on third parties who have not consented to the limitation of liability, and as regards these, the members will be liable to the full extent. . . . .
>
> English law, however, has been more fortunate in possessing a further legal relationship which could be established by agreement and which enabled objects to be achieved which were beyond the reach of contract. This relationship, which has come to be called the *trust*, has played a great role in enabling associations to form and maintain themselves in a satisfactory legal position without being incorporated, at times when the State was most hostile towards

corporations" (Footnotes omitted.) (Italics emphasis added).

Huber on *CONFLICT OF LAWS* makes it very clear beyond doubt in *PRAELECT* pt. 2. bk. 1, tit, 3, n. 2 that any state created rights based on convenience and utility is not binding obligation or duty. Paul Voet, Huber, and John Voet all agree that laws that have extra-territorial effect rest entirely on comity. P. Voet, Statutis s. 4, c. 2, n. 7.

Foreign law can have no effect ipso jure outside the territory of the enacting state. It must be recognized or accepted, that is, incorporated by the law of the forum. This is Hubers doctrine in essence. This is also the standpoint of the Anglo American law. See Pillet, *PRINCIPLES DE DROIT INTERNATIONAL PRIVE* Paris and Grenable, 1903; Zitelman, *INTERNATIONALES PRIVATRECHT,* Leipzig, Vol. 1 (2nd ed) 1912, Vol. 2 (1st ed.), 1903. See also Davies, *THE INFLUENCE OF HUBERS DE CONFLICTU LEGUM ON ENGLISH PRIVATE INTERNATIONAL LAW,* 18 Brit. Y.B. Int. L. 49 (1937); Lorenzen, *HUBERS DE LORENZEN, SELECTED ARTICLES ON THE CONFLICT OF LAWS,* 136 (1947). Cf. Anton, *THE INTRODUCTION INTO ENGLISH PRACTICE OF CONTINENTAL THEORIES ON THE CONFLICT OF LAWS,* 5 Int. & Comp. L.Q. 534 at 539 (1956).

Petitioner is a creditor permanently domiciled in Pennsylvania thus, has no other property in interstate commerce "subject to the jurisdiction thereof" with an unincorporated banking association of "persons" under the 14th Amendment, and territorial law of Article IV Section 3 cl. 2 of the U.S. Constitution.

Further, Petitioner argues that the lower court in denying Petitioner's argument that he cannot be compelled to "discharge" an obligation, assigned Petitioner to an unincorporated state by and under H.J.R. 192 (48 Stat 113) supra, and Article IV Section 3 cl. 2. The court has no power to enter Petitioner into such a condition, thus denying 14th

Amendment equal protection, and Petitioner's right of contract.

OBLIGATION OF CONTRACT

The revelant part of Article I Section 10 clause 1 to the Constitution of U.S. to wit:

> "No State shall make anything but . . . Payment of Debts . . . or Law impairing the Obligation of Contracts, . . . ".

It is Petitioners private policy not to accept a privilege in a federated unincorporated association of states under *Erie Railroad v. Tompkins*, 304 U.S. 64; 15 U.S.C. §1602 (c), (d), (e); and H.J.R. 192, (48 Stat. 113).

As early as 1782 Jefferson told Monroe that it was ridiculous to suppose that a man should surrender himself to the state. "This would be slavery, and not that liberty which the bill of rights has made inviolable, and for the preservation of which our government has been changed." Freedom, said Jefferson, would be destroyed by "the establishment of the opinion that the state has a *perpetual* right to the services of all it's members." Jefferson to Monroe, May 20, 1782, *Jefferson Papers* , IX, p. 380, Boyd, Edition. Excerpt from the book *THE CREATION OF THE AMERICAN REPUBLIC,* 1776-1787 (p. 610) by Gordon S. Wood.

The lower court by its order made a political decision by removing Petitioner from the protection of Article IV Section 3 cl. 1 and placing him under Article IV Section 3 cl. 2 and clauses 1 and 2 to Section I of the 14th Amendment which the court has no authority to make.

"The equal protection of the laws which, by the Fourteenth Amendment, no state can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or

of the public ..." *Reagan v. Farmers Loan and Trust Co.*, 154 U.S. 362. To destroy a validly acquired right is the taking of property. *Osborn v. Nicholson*, 13 Wall. 654, 662. Quoting *Perry v. United States* supra, 294 U.S. 374.

Petitioner's private policy is contrary to that of the public policy of 15 U.S.C. §1602 (c), (d), (e), H.J.R. 192, (48 Stat 113) supra, thus a conflict of law between "a territory" of new unincorporated states under private Roman law of Article IV Section 3 cl. 2; as opposed to the common law of Pennsylvania as incorporated into the Union of states in the U.S. Constitution under Article IV Section 3 cl. 1. That under 15 U.S.C. §1602 (c), (d), (e), H.J.R. 192, (48 Stat 113), supra. Congress was not acting under its general powers of Article I in the U.S. Constitution; but rather under its unincorporated powers under local law that emanates out of Article IV Section 3 cl. 2.

State cannot interfere with private rights, *Dartmouth College v. Woodward*, 4 Wheat 518 (1819); nor can the State convert a liberty into a privilege, *Murdock v. Pennsylvania* 319 U.S. 262.

Petitioner maintains that, H.J.R. 192 (48 Stat 113) supra, is declaratory of a chose in action for a chose in possession therefore, as a non debtor to public policy, Petitioner has property rights in possession, not obligations. "Debts . . . are not the property of the debtors; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property . . .." *Jones v. New Pittsburgh Courier Pub.* 364 A.2d 1315, 469 Pa 157 cert den 430 U.S. 984 (1976). Quoting *State tax on Foreign-Held Bonds*, 82 U.S. 300, 320, (1872)."

Article IV Section 3 cl. 1 defines how new states are to be incorporated into the Union of states to wit:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the

> Legislatures of the States concerned as well as of the Congress.

Under Article IV Section 3 cl. 2 there are no powers to incorporate anything. The clause merely states:

> "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . . ". [Underline emphasis added]. See *O'Donoghue v. United States* supra.

Further, the lower court amended the U.S. Constitution without the proper process. "Federal statutes enforceable in state courts do, in a sense, direct state judges to enforce them, but this sort of federal "direction" of state judges is mandated by the text of the Supremacy Clause." *New York v. United States* supra, 505 U.S. 144, 179.

Article VI cl. 2 to the U.S. Constitution states:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

SEPARATION OF POWERS

Additionally, the court Order flies in the face of the Separation of Powers Doctrine of Article II to the Constitution of U.S. in that the court acted as a legislature by overruling Congress' H.J.R. 192 (48 Stat 113) supra, "The Constitution's division of power among the three Branches is violated where one Branch invades the territory of another", *New York v. United States*, 505 U.S. 144, 182, (1992), thus, putting in motion case law that could lead to compelled performance to private Roman law, not only with the above entitled action, but also other actions involving the Commonwealth. The lower court essentiality contracted Petitioner into an unincorporated association under private Roman law. "The Constitution does not protect the sovereignty of States for the benefit of the States or state

governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals." *Id.* 181.

Amendments IX and X further guarantees that protection.

Amendment IX

The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

PROHIBITION

By the Order of the Superior Court dated August 13, 2002, at A-6, Petitioner was denied his appeal on preliminary objections stating that the trial court's order is interlocutory therefore, is not a final appealable order. Petitioner argues that the Order is final as it puts Petitioner out of court because his whole defense is based upon U.S. statutory and U.S. Constitutional law which the lower court ignored in order to made a political decision which the court has no authority to render both from the standpoint of the separation of powers doctrine and Petitioner's right of contract.

Order is interlocutory and not final unless it effectively puts litigant out of court. *T.C.R. Realty, Inc. v. Cox* 372 A.2d 721, 472 Pa 331, (1977).

First condition for issuance of common law writ of prohibition, i.e., usurpation of power, is satisfied when inferior tribunal has no jurisdiction over subject matter from very beginning of proceeding, or when inferior tribunal has exceeded its jurisdiction. *Municipal Publications Inc. v.*

Snyder, 469 A.2d 1084, 322 Pa.Super 464 vacated 489 A.2d 1286, 507 Pa. 194.

The purpose of writ of prohibition is to prevent an inferior judicial tribunal from assuming jurisdiction it does not possess or from taking some action which constitutes an abuse of its jurisdiction. *Liciage v. Court of Common Pleas of Lehigh County*, 566 A.2d 246, 523 Pa 258.

The rationale for granting a writ of prohibition is to shut off the necessity of going through a hearing or trial before a tribunal that has no power to deal with the subject. *Spykerman v. Levy*, 421 A.2d 641, 491 Pa. 470.

The judicial wrong or fault which calls for the writ of prohibition does not mean an infraction of personal rights only, but rather an offending of the court by an assumption of judicial power and jurisdiction not authorized by law. *State ex rel. Terminal R. Ass'n. v. Tracy*, 140 SW 888, and it may be either jurisdiction of the entire subject matter or of something collateral or incidental thereto. *Bullard v. Thorpe*, 30 A 36.

A writ of prohibition is proper, not only in cases where the lower tribunal has no legal authority to act at all, but also in cases where such inferior tribunal though having general jurisdiction over a particular class of cases, has exceeded such jurisdiction or its authorized powers in the particular case.[1] A court may be prohibited from acting in excess of its jurisdiction when it proceeds against the express prohibition of a statute, *Haynes v. Justice's Court,* 23P 125. [Underline emphasis added] or proceeds in a different manner than that prescribed by a relevant statute, *Cooper v. Matzkin* 160, A2d

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[1] *Dean v. Superior Court of County of Maricopa* 324 P2d 764; *Skinner v. Mayfield*, 439 SW2d 651; *People ex rel. Smith v. County Court of Fremont County*, 102 P2d 476; *State ex rel. Emmert v. Hamilton Circuit Court*, 61 NE2d 182; *Weaver v. Toney*, 54 SW 732; *Ashley v. Wait*, 116 NE 961, error dismd 250 US 652; *Peters v. Buckner*, 232 SW 1024; *State ex rel. Taylor v. District Court of Eleventh Judicial Dist.* 310 P2d 779; *La Rocca v. Lane*, 338 NE2d 606, cert den 424 US 968; *Proskin v. County Court of Albany County*, 280 NE2d 875; *State ex rel. Trapp v. Chambers*, 220 P 890.

811. See H.J.R. 192 (48 Stat 113). The writ will also lie for an excess of territorial jurisdiction.[2]

FULL FAITH AND CREDIT CLAUSE OF U.S. CONSTITUTION

Under the full faith and credit clause of the Constitution of United States, a judgment rendered by a court of one state is, in the courts of another **state of the Union**, binding[3] conclusive.[4] [Bold underline added] Petitioner furthers his argument, by appealing to the full faith and credit clause of Article IV Section 1 of the U.S. Constitution and states that being Petitioner is a creditor permanently domiciled in Pennsylvania as a state incorporated in the Union under Article IV Section 3 cl. 1; thus not a resident of an unincorporated association of states, or Pennsylvania as a governmental subdivision under Article IV Section 3 cl. 2 as noted in *O'Donoghue v. United States* supra.

Petitioner is entitled to the full faith and credit of other states decisions as declared in *Milwaukee County v. M.E. White Co.*, 296 US 268. The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore

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[2] *Steingut v. Gold*, 397 366 NE2d 854; *Wells v. City Court of Logan City* (Utah) 535 P2d; *Pennsylvania R. Co. v. Rogers*, 44 SE 300.

[3] *Morgan Guaranty Trust Co. v. Huntington*, 179 A2d 604; *Irving Trust Co. v. Kaplan*, 20 So2d 351; *Howland v. Stitzer*, 5 SE2d 104; *Gilbert v. Gilbert*, 94 NE 421.

[4] *Magnolia Petroleum Co. v. Hunt*, 320 US 430, reh den 321 US, 801; *Rice v. Metropolitan L. Ins. Co.*,238 SW 772; *Morgan Guaranty Trust Co. v. Huntington*, 179 A2d 604; *Horton v. Critchfield*, 18 Ill 133; *Fred Miller Brewing Co. v. Capital Ins. Co*, 82 NW 1023; *Brand v. Brand*, 76 SW 868; *Wernwag v. Pawling* (Md) 5 Gill & J 500; *Francis v. Hazlett*, 78 NE 405; *Mutual F. Ins. Co. v. Phoenix Furniture Co.*,66 NW 1095; *Ferguson v. Crawford*, 70 NY 253; *Howland v. Stitzer*, 58 SE2d 104; *Gorrington v. Crosby*, 210 NW 342; *Re Crawford*, 67 NE 156; *Levine v. Levine*, 187 P 609; *Baxley v. Linah*, 16 Pa 241; *Scheper v. Scheper*, 118 SE 178; *Buford v. Buford*, 18 Va (4 Munf) 241; *Stewart v. Northern Assur. Co.*, 32 SE 218; *Parker v. Stoughton Mill Co.*,64 NW 751.

as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.

The constitutional requirement as to full faith must be interpreted in connection with other provisions of the Constitution. *Old Wayne Mut. Life Asso. v. Mc Donough*, 204 US 8.

Thus it has been stated that the full faith and credit clause of Article IV Section 1 should generally be construed and considered together with Section 1 of the 14th Amendment. *Matera v. Hauptmann* 179 A 626; *Re Hanrahan's Will*, 194 A. 471. [Underlined emphasis added]

The full faith and credit clause prescribes a rule by which courts, state and federal, are to be guided when a question arises in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a state other than that in which the court is sitting. *Minnesota v. Northern Secur. Co., 194 US 48.*

The purpose of the full faith and credit provision is to preserve rights acquired or confirmed under public acts and judicial proceedings of one state by requiring recognition of their validity in others. *Pink v. A.A.A. Highway Express Inc.*, 314 US 201, reh den 314 US 716.

"Jurisdiction of the court extends by the letter of the U.S. Constitution. Those who would withdraw any case from that description must sustain the exemption they claim on the spirit and true meaning of the Constitution, and that spirit and true meaning must be so apparent as to override the words which the framers have employed." *Cohens v. Virginia* 19 U.S. 264 (1821). Petitioner has no privileges and immunities under the 14th Amendment, and does not belong to a private unincorporated banking association of "persons" under Title 15 U.S.C., Chap. 41, Section 1602 (c), (d), and (e), or states

under Article IV Section 3 cl. 2; thus entitled to the letter of the law. The lower court failed in its order to override the words of the framers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: July 12th, 2003

Gerald F. Karlheim

Gerald F. Karlheim *Pro Se*
1327 Schoolhouse Dr.
Dysart, PA, 16636
814 674 5302

IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

GERALD F. KARLHEIM,
Petitioner No. 109 WM 2002

v.

THE COURT OF COMMON PLEAS FOR CAMBRIA COUNTY,
Respondent

ORDER

PER CURIAM

AND NOW, this 15th day of May, 2003, the request for leave to file original process is granted. The Petition for Writ of Prohibition is denied and the judge's name is to be stricken from the caption.

A True Copy Patricia Nicola
As of: May 15, 2003
Attest
Chief Clerk
Supreme Court of Pennsylvania

THE SUPERIOR COURT OF PENNSYLVANIA
Office of the Prothonotary
1015 GRANT BUILDING
PITTSBURGH, PENNSYLVANIA 15219

DAVID A. SZEWCZAK. ESQUIRE
PROTHONOTARY

(412) 565-1592

ELEANOR R. VALECKO
DEPUTY SECRETARY

September 9, 2002

Mr. Gerald F. Karlheim
1327 Schoolhouse Drive
Dysart, PA 16636

In Re: Gerald F. Karlheim, Petitioner v. Long, J,
No.74 WDM 2002

Dear Mr. Karlheim:

The Court has entered an Order on your Petition for Writ of Prohibition filed in the above-captioned matter:

ORDER OF COURT
"Petitioner Karlheim's August 29, 2002 petition for writ of prohibition is DENIED."

Date: September 9, 2002 Per Curiam"

Very truly yours,
/s/ Eleanor R. Valecko

DEPUTY PROTHONOTARY
ERV:bnl
Cc: Michael Emerick, Esquire Hon. Gerard Long,
P .J.

THE COURT OF COMMON PLEAS OF CAMBRIA
COUNTY, PENNSYLVANIA
CIVIL DIVISION

STURDY BUILT MANUFACTURING

Plaintiff,

vs.

No.2002-1074
ARGUMENT COURT
May 24, 2002

GERALD F. KARLHEIM,
Defendant.

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL EMERICK, ESQUIRE

-FOR THE DEFENDANT: PRO SE
****

BEFORE THE HONORABLE GERARD LONG,
PRESIDENT JUDGE OF THE COURT OF
COMMON PLEAS OF THE FORTY -SEVENTH
JUDICIAL DISTRICT OF
A-4
PENNSYLVANIA

****

ORDER

AND NOW, this 14th day of June, 2002, following consideration of the briefs, oral argument, the pleadings, and the entire record, the Court

finds that the Defendant's Preliminary objections are hereby DENIED and DISMISSED.

BY THE COURT

/s/_____
Gerald Long, P.J.

THE SUPERIOR COURT OF PENNSYLVANIA
Office of the Prothonotary
1015 GRANT BUILDING
PITTSBURGH, PENNSYLVANIA 15219

DAVID A. SZEWCZAK. ESQUIRE
PROTHONOTARY
August 13, 2002
(412) 565-1592

ELEANOR R. VALECKO
DEPUTY SECRETARY

Mr. Gerald F. Karlheim
1327 Schoolhouse Drive
Dysart, PA 16636

In Re: Sturdy Built Manufacturing Inc. v. Gerald F. Karlheim
Appellant

No.1194 WDA 2002

Dear Mr. Karlheim:

The Court has entered an Order on your appeal filed in the above captioned matter and a certified copy of this order will be sent to lower court.

ORDER OF COURT

"AND NOW, THIS 13th Day of August, 2002, this court hereby SUA SPONTE QUASHES the above-captioned appeal, as the trial court's order on appeal is interlocutory. See Shadduck v. Kaclik, Inc. 713 A2d 635 (PA Super. 1998) (stating that order denying preliminary objections is not a

final appealable order).

Per Curiam"

Very truly yours,
/s/ Eleanor R. Valecko
DEPUTY PROTHONOTARY
ERV:bnl
Cc: Michael Emerick, Esquire